

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4751 of 1995

with

Civil Application No. 3826 of 1997

VARUN CARRIERS

Versus

UNION OF INDIA

Appearance:

M/S TRIVEDI & GUPTA for Petitioners

MR JJ YAGNIK FOR Respondents.

CORAM : MR.JUSTICE R.BALIA.

Date of Order: 06/05/97

ORAL ORDER

1. At the request of both the learned counsel for the parties the special civil application has itself been heard finally. From the facts to be taken note of hereafter it would appear that a short question arise for determination. The petitioner union was awarded contract work for loading and unloading and transhipment of goods from broad gauge to meter gauge and meter gauge to broad gauge. The contract was to expire on 31.8.1994 which was extended up to 30.9.94 and licence of the petitioner, obtained under the Contract Labour (Regulation and Abolition) Act, also came to be cancelled. The petitioners' claim to payment on completion of contract admittedly resulted in a payment due to the petitioners to the tune of Rs.62,22,574.00. According to the averments made in paragraph 2.5 of the reply affidavit, as per the computations shown in Annexure II annexed to the reply affidavit after adjusting amount recoverable from the petitioner against the amount payable to the petitioner amounting to Rs.76,22,757.00, the net amount which the petitioners would be entitled to was stated to be Rs.62,22,574.00. It was clarified in terms of Annexure II that this amount which became payable to the petitioners included security deposits which on completion of contract was refundable to petitioner to the tune of Rs.22,95,300.00, Since the security deposit was satisfied through bank guarantee and not by deposit

of actual cash the actual cash amount to which the petitioners were entitled to payment came to Rs.39,27,274.00 as in respect of security deposit only bank guarantees were to be discharged and no actual payment was to be made. Since the respondents General Manager, Western Railway had withheld the payment of said amount for no reason, subject to furnishing of bank guarantee, this petition was filed seeking mandamus to the respondents not to detain the the payment of the amount of Rs.83,17,082/- alleged to be the admitted dues legally payable to the petitioner.

2. In reply affidavit the justification for detaining the admitted sum, and insisting of bank guarantee for Rs.39,27,274.00 was stated to be that the two claim applications Nos. 875 of 1994 and 44 of 1995 have been filed respectively on behalf of 1500 and 450 workmen before the authority under Payment of Wages Act, for a sum totalling to Rs.58,54,047.60. It was also stated that in view of the provisions of the agreement between the parties, the Contractor is bound to give full indemnity towards the payment of dues towards labourers and the railway administration has been given full right to deduct the same from security deposit. It was also stated that the railway administration is ready and willing to release dues of the petitioner against the bank guarantee.

3. From the aforesaid averments made in reply affidavit it is apparent that so far amount due to the petitioner is concerned, there is no dispute. There is no dispute about the liability of the Western Railway Administration to make payment to the petitioner in lieu of contract executed by it. It may also be noticed here that on going through the pleadings and the details in Annexure II to the reply affidavit, learned counsel for the petitioner candidly stated that the admitted claim to which this petition can be referable to would come to only Rs.39,27,274.00 as no payment in lieu of bank guarantee need be made to the petitioner nor any amount would become payable in addition to Rs.62,22,574.00 as per the admitted claim in that regard.

4. The only question arises for consideration is whether under the indemnity clause to which reference has been made against possible claims arising out of dispute between the contractor and his employees in respect of payment of any sum to the workmen as a result of non fulfillment of obligation or breach of provisions of various labour laws like the Industrial Disputes Act, Payment of Bonus Act, Payment of Gratuity Act etc, the

railway administration was entitled to withhold the money which become payable as per its own account to the contractor.

5. This question need not detain me long inasmuch as it has been pointed by learned counsel for the petitioner about which also there is no dispute, that in both the claims referred to above before the Payment of Wages Authority, an application has been moved on behalf of Western Railway and Union of India - respondents Nos. 5 and 6 in those claim petitions alleging that according to oral and written submissions given in the case before the Labour Court by opponents Nos. 1 to 4 which included Varun Carriers - petitioners in this application - that they are ready and prepared to take all monetary and legal liability of railway administration revised in the above petition upon themselves. Opponent Nos. 1 to 4 are ready to accept all future liability of Railway Administration upon them. A prayer was made that with the aforesaid observation, the railway administration and the Union of India be deleted in the claim petitions as respondents. To this prayer, the applicant Bright Mazdoor Union representing the claim of the workmen conceded. From the aforesaid, it is abundantly clear that by consent of all the three parties to dispute, namely, the workmen, the Western Railway Administration claimed to be the principal employer and the contractor under whom the workmen are actually employed, after raising the claim the railway administration was released from any liability arising out of the said proceedings by the claimants and they (workmen) were satisfied to proceed only against the present petitioner as its employer. The present petitioners had also given an undertaking before the wage authority to discharge all the obligations and liabilities that may be fastened on it as a result of adjudication thereof. In view of this tripartite arrangement it is now futile for railway administration to contend that there is any estimated liability that could be determined against it in the proceeding arising out of those claim petitions, for which it can fall back on indemnity clause in the agreement for withholding the amount. To this conclusion I reach without examining the merit of the indemnity clause whether in fact it so authorises, but for the present purpose it has been so assumed. Moreover, it has been brought to the notice of the Court that since then the wage authority has dismissed the claim petitions referred to in the reply affidavit albeit it has not attained finality in the sense that there is still room for the parties to avail of their remedies against the said order. Be that as it may, the fact remains that as

far as the claims arising under those claim petitions are concerned, the Union of India and Western Railway have been absolved from any liability reaching them inasmuch as firstly they have been made consciously as parties to that dispute. Thereafter their names have been agreed to be deleted consciously on an undertaking given by the present petitioners to discharge all liabilities, if any, arising from such claims, in proceedings relating thereto. In that view of the matter, on their own showing there was no reason for Railway Administration for withholding the payment on the supposed liability in respect of the two claims reaching the Western Railway Administration.

6. For the reasons aforesaid, this petition is allowed. The respondents are directed to release the payment as admitted by them to be done within a period of two weeks from the service of this order and release the existing bank guarantee against the security deposits, without prejudice to respective rights of the parties about the disputed amount if any.

Rule made absolute accordingly. There shall be no orders as to costs.

Before parting with the case, it may be recorded that learned counsel for the petitioners on behalf of petitioners have made a statement by way of an undertaking that they shall abide by the undertaking given before the Payment of Wages Authority to discharge any liability arising out of the said claims whether the same is ultimately decided by proceedings under Payment of Wages Act or by any other forum and they shall furnish adequate security for such estimated liability before whichever forum the proceedings are pending to the satisfaction of the Presiding Officer of that Forum.

In view of the orders made in the Special Civil Application, the civil application does not survive for consideration. the same is dismissed.

(Rajesh Balia, J)